

10259  
RECORDATION NO. .... Filed 1425

APR 6 1979 - 10 35 AM

INTERSTATE COMMERCE COMMISSION April 6, 1979

9-095A-223

APR 06 1979

Secretary  
Interstate Commerce Commission  
Washington, D.C.

10259  
RECORDATION NO. .... Filed 1425

APR 6 1979 - 10 35 AM

INTERSTATE COMMERCE COMMISSION

Dear Sir:

Enclosed for recordation pursuant to the provisions of Section 11303(a) of Title 49 of the United States Code and the rules and regulations thereunder are one counterpart each of a Limited Recourse Promissory Note-Security Agreement dated March 29, 1979 and an Agreement of Lease dated March 29, 1979.

A general description of the railroad equipment covered by the enclosed documents is contained in the attached Schedule.

The names and addresses of the parties to the enclosed documents are:

A. Limited Recourse Promissory Note-Security Agreement:

PAYOR or DEBTOR F S Railcars, Inc.  
1000 RIDC Plaza  
Pittsburgh, Pennsylvania 15238

PAYEE or SECURED PARTY Auto-Train Corporation  
1801 K Street, N.W.  
Washington, D.C.

B. Agreement of Lease:

LESSOR: F S Railcars, Inc.  
1000 RIDC Plaza  
Pittsburgh, Pennsylvania 15238

LESSEE: Auto-Train Corporation  
1801 K Street, N.W.  
Washington, D.C.

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*C. F. Kowder*  
*[Signature]*

Secretary  
Interstate Commerce Commission  
April 6, 1979  
Page Two

The undersigned is agent for the Payor/Lessor mentioned in the enclosed documents for the purpose of submitting the enclosed documents for recordation and has knowledge of the matters set forth therein.

Also enclosed is a remittance in the amount of \$100 in payment of recordation fees.

Very truly yours,

ALVORD AND ALVORD  
as Agent for F S Railcars, Inc.

By Charles T. Kappler  
Charles T. Kappler

# SCHEDULE

<u>Description</u>	<u># of Units</u>	<u>Identification Numbers</u>
Half Dome Coach	7	904, 905, 907, 911-913, 909
Half Dome Diners	3	801, 802, 805
Kitchen Dormitory	1	593
Sleeper	2	AM2241, AM2803
Sleeper	2	250, 252
-Cabooses	1	93
Single Level Auto Carrier	1	194
Low Level Coach	1	582
-Locomotive "B" Units	2	1139, 1140
Half Dome Diner	1	800
Crew Sleepers	2	630, 631
-Cabooses	2	91, 92
-Yard Locomotives	4	622-625
Single Level Carrier*	6	190-193, 195-196
Auto Carrier/Cabooses*	3	3, 6, 12
Full Dome Coaches*	13	510-515, 520-521, 523- 524, 522, 540, 541
Half Dome Coaches*	2	460, 470
Half Dome Coaches*	10	700-709
Half Dome Coach*	1	902
Half Dome Diners*	5	804, 806, 807, 803, 808
Diner*	4	590, 592, 594, 598
Diner*	1	570
Diner*	1	580
Kitchen Dormitories*	4	591, 595, 597, 599
Sleepers*	6	201-206
Sleepers*	2	304, 305
Steam Generators*	6	1130, 1132, 1134, 1136- 1138
Bi-Levels*	7	4, 17, 21, 22, 23, 25, 26
Tri-Levels*	20	101-120
Tri-Level Prototype*	1	100

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\* Subject to a first Lien of Commercial Credit Industrial Corp. and a second Lien of Riggs National Bank.

**Interstate Commerce Commission**  
**Washington, D.C. 20423**

4/6/79

OFFICE OF THE SECRETARY

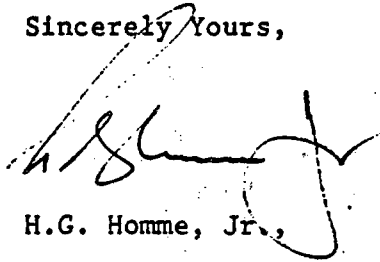
Charles T. Kappler, Atty.  
Alvord And Alvord  
200 World Center Building  
Washington, D.C. 20006

Dear

Sir:

The enclosed document(s) was recorded pursuant to the  
provisions of Section 20(c) of the Interstate Commerce Act,  
49 U.S.C. 20(c), on 4/6/79 at 10:35am ,  
and assigned recordation number(s) 10259 & 10259-A, 10260  
10261

Sincerely Yours,

  
H.G. Homme, Jr.,  
Secretary

Enclosure(s)

SE-30-T  
(2/78)

The rights of the parties hereto are subject to the conditions referred to in letters of consent issued by Commercial Credit Industrial Corp., 300 St. Paul Place, Baltimore, Maryland 21202, and Riggs National Bank of Washington, D.C. dated March , 1979 and to the Liens.

RECORDATION NO. 10259 Filed 1425

APR 6 1979-10 35 AM

LIMITED RECOURSE PROMISSORY NOTE - SECURITY AGREEMENT MERCE COMMISSION

\$13,375,000

Date: March 31, 1979

FOR VALUE RECEIVED, the undersigned, FS RAILCARS, INC., a Delaware corporation having its principal office and place of business at 1000 RIDC Plaza, Pittsburgh, Pennsylvania 15238 ("Payor" or "Debtor"), promises to pay to AUTO-TRAIN CORPORATION, a Florida corporation at its principal office and place of business at 1801 K Street, N.W., Washington, D.C. ("Payee" or "Secured Party"), the principal sum of \$13,375,000, together with interest thereon from the date hereof at the rate of 12.8% per annum. Subject to the provisions with respect to acceleration contained in Section 6 below and the provisions with respect to prepayment and deferral set forth in Section 5 below, this Note shall be payable in 180 consecutive combined monthly payments of principal and interest in the amount of \$167,469.82 each, with the first monthly payment due and payable on April 30, 1979 and each subsequent monthly payment due and payable on the last day of each month thereafter to and including March 31, 1994. Interest in the amount of \$14,266.67 for the period through March 31, 1979 shall be payable on such date. Each payment under this Note shall first be applied to interest which shall have accrued, but not have been paid hereunder at the time of the making of such payment, and the balance, if any, of each such payment shall be applied to reduce the then outstanding principal balance hereof.

1. Background.

Payor and Payee are parties to an agreement of even date (the "Purchase Agreement"), pursuant to which Payee has sold and assigned to Payor the equipment (the "Equipment") listed and described on the Schedule attached hereto. Payor has also leased the Equipment to Payee pursuant to an agreement of lease (the "Lease") of even date herewith. This Note is referred to in the Purchase Agreement as the Installment Note. In order to induce Payee to accept this Note, Payor is granting to Payee hereunder a lien with respect to the aforesaid equipment pursuant to which payment of this Note is secured on the terms and conditions hereinafter provided.

## 2. Definitions.

Unless the context of this Note indicates otherwise, all terms defined in the Purchase Agreement or the Lease shall have the same meanings as are ascribed to such terms therein.

## 3. Security Interest.

To secure the payment when due of principal and interest under this Note and the payment and performance by Payor, when due, of all obligations and liabilities of Payor to Payee under this Note, the Purchase Agreement, the Lease and any other Document (such payment under this Note, and such payment and performance of such obligations and liabilities are hereinafter referred to collectively as the "Obligations"), Payor shall and hereby does, on and as of the date hereof, grant, convey, assign and transfer to Payee, subject and subordinate, however, to the right of the holders (collectively the "Senior Lienholder") of the Liens or any extension, modification, replacement, exchange or increase of the Liens permitted under the Purchase Agreement, a purchase money security interest in and to the Equipment and all additions, replacements and attachments thereto, all leases covering the same, all other contracts calling for the disposition of the Equipment or its use, and all proceeds (collectively, the "Collateral"), including the monthly Rent (as defined in the Lease); provided, however, that such security interest shall not apply to (a) any proceeds received by Payor as a result of transactions entered into by Payor, its successors and assigns as described on Exhibit A hereto, and (b) any monthly Rent or other sums received at any time by Payor, which are in excess of the amounts due hereunder to Payee at such time of receipt of such Rent or other sums by Payor.

## 4. Prepayment.

Except as provided in Section 5 below or Section 16.1 of the Lease, this Note may not be prepaid in whole, or in part, at any time.

5. Deferral, etc.

5.1 Payment of Lien. Payee does hereby agree to cause to be paid all amounts due or to become due in respect of the Liens to the holders thereof, as and when required thereunder, whether constant payments, by acceleration or otherwise. In the event Debtor (which, upon the occurrence and continuation of an Event of Default under the Lease and upon notice to Payee, Debtor shall have the right, but not the obligation, so to do) pays the Liens or any other debt of Payee whether pursuant to the terms of the Liens or otherwise, or, in the event of the sale or other disposition of the Equipment pursuant to a foreclosure or similar proceeding instituted by a Senior Lienholder, all amounts so paid by Debtor or received by such Senior Lienholder in payment of its Lien, as the case may be, shall be deemed to be prepayments under this Note.

5.2 Deferral. Payor shall have in addition to all other rights and remedies it may have in such event the right to defer payment of principal and interest as the same becomes due hereunder if and to the extent any amount of Rent or other sum becoming due to Payor under the Lease is not received by Payor as the same becomes due (the "Past Due Sum"). The amount of principal and interest so deferred will become due and payable at such time as, and to the extent that, Payor receives from Payee, the Past Due Sum; provided, however, that no interest shall accrue on the principal and interest payments so deferred; provided, further, however, that the amount of interest and principal so deferred shall become due and payable on March 31, 1994, whether or not Payor shall have received the Past Due Sum on or before such date.

5.3 Application of Proceeds. If the Lease has been terminated, Payor's obligation to make monthly payments under this Note shall automatically be modified as follows:

(a) If Payor relets the Equipment or operates the Equipment itself, Payor shall pay to Payee monthly through March 31, 1994, in prepayment of this Note, the amount of any proceeds received by Payor from such reletting or operation, less

(1) all reasonable costs and expenses incurred by Payor in connection with terminating the Lease and reletting or operating the Equipment;

(2) The Past Due Sum, if any; and

(3) any amounts paid by Payor to the Senior Lienholders not included in the Past Due Sum; provided that Payor shall not be required to pay to Payee more than \$167,469.82 per month on a cumulative basis.

(b) If Payor sells or otherwise disposes of the Equipment (other than by lease) Payor shall pay to Payee, in prepayment of this Note, an amount equal to the proceeds received by Payor on such sale or disposition, less

(1) all reasonable costs and expenses incurred by Payor in connection with terminating the Lease and selling or otherwise disposing of the Equipment;

(2) the amounts described in clauses (2) and (3) of subsection (a) above; and

(3) except as provided below, any other damages suffered by Payor as a result of the sale or other disposition of the Equipment.

Notwithstanding the foregoing, Payor shall in no event be entitled to deduct from the amounts payable to Payee under this Section 5.3 any damages with respect to Fixed Rent which would otherwise have been due under the Lease after the date of termination of the Lease but for such termination. The difference between the aggregate amounts paid by Payor to Payee under subsection (a) or (b) above and the aggregate amounts of principal and interest due and unpaid under this Note shall be deferred until March 31, 1994 at which time the amount of such difference shall become fully due and payable, provided, however, that no interest shall accrue on the amount so deferred.

## 6. Default.

6.1 Event of Default. The term "Event of Default" as used herein (except where expressly referring to an Event of Default as defined in the Lease), shall mean the occurrence and continuation of any one or more of the following events:



(a) The failure of Debtor to promptly pay when due any payment due and payable under this Note which failure continues for 10 days after notice, subject however to the provisions of Section 5 hereof;

(b) The failure of Debtor to promptly and faithfully pay, observe and perform when due any of the Obligations other than those referred to in subsection (a) above, which failure or material breach continues for 30 days after notice;

(c) If Debtor shall sell, transfer or otherwise dispose of Collateral in violation of Section 10 below; or

(d) If Debtor shall engage in any business other than owning, leasing, operating, using or enjoying the Equipment or if Debtor shall incur any indebtedness for borrowed money unless such indebtedness is incurred in order to enable Debtor to pay, perform or observe any covenant, warranty or agreement of Secured Party under the Purchase Agreement, the Lease or any other Document upon the failure of Secured Party so to do.

6.2 Acceleration. Upon the occurrence of an Event of Default the entire unpaid principal balance and all accrued but unpaid interest under this Note and all other amounts payable to Secured Party pursuant to the Obligations shall, at Payee's option, be accelerated and become and be immediately due and payable and Secured Party shall have all the rights and remedies with respect to the Collateral of a secured party holding a purchase money security interest under the Uniform Commercial Code; provided, however, that such rights and remedies shall be subject and subordinate to the security and other interests and the rights and remedies of all Senior Lienholders and further provided that Secured Party shall not exercise any rights or options under this Section, and an Event of Default shall not be deemed to exist, so long as an Event of Default, as defined in the Lease, by Secured Party as lessee, has occurred and is continuing and for five (5) days after the curing thereof. The Secured Party shall give Debtor reasonable notice of the time and place of any public or private sale or other intended disposition of all or any portion of the Collateral. Debtor agrees that the requirements of reasonable notice shall be

met if notice is mailed to Debtor at its address first above written not less than ten (10) business days prior to the sale or other disposition. Expenses of retaking, holding, preparing for sale, selling or the like, shall include, without limitation, Secured Party's reasonable attorneys' fees and other legal expenses. Secured Party's rights and remedies, whether pursuant hereto or pursuant to the Uniform Commercial Code or any other statute or rule of law conferring rights similar to those conferred by the Uniform Commercial Code, shall be cumulative and not alternative.

7. Limited-Recourse.

Anything in this Note, the Purchase Agreement or any other Document to the contrary notwithstanding, with respect to any sums due hereunder or under any other Document, Payor's Obligations shall be non-recourse and Payee shall look solely and only to the Collateral for the payment and performance of all of such Obligations of Payor, and, with respect to such Obligations, Payee, for itself and its successors and assigns, hereby expressly waives any right to enforce payment and performance by Payor in respect thereof other than to proceed against the Collateral as provided herein.

8. Replacement.

Effective upon any replacement under Section 6.2 of the Lease (i) all incidents of Secured Party's security interest in the Replaced Equipment (as defined in the Lease), ipso facto, shall cease and terminate automatically; and (ii) the schedule attached to the Purchase Agreement (the "Schedule") shall be amended, ipso facto, to delete therefrom the Replaced Equipment, as defined in the Lease (and all other information contained therein relating to the Replaced Equipment) and to add thereto the Replacement Equipment, as defined in the Lease (and other information relating to the Replacement Equipment called for by the Schedule), so that the Collateral shall include the Replacement Equipment and not the Replaced Equipment.

9. Notices.

Any notice, request or other communication required or permitted to be given under any of the provisions of this Agreement, shall be in writing and shall be deemed given on the date the same is sent by certified or registered mail,

return receipt requested, postage prepaid and addressed to the party for which intended at its address set forth at the head of this Agreement together with a copy to one additional addressee as may be requested by notice hereunder or at such other address as such party may hereafter designate to the other in a like notice.

10. Restrictions on Transfer.

Debtor shall not sell, lease, transfer or otherwise convey all or any portion of the Collateral unless it first delivers to Secured Party documentation executed by the transferee to the effect that the transferee's interest in the Collateral transferred is subject and subordinate to the rights and interests of Secured Party and the Senior Lienholders. Further, Debtor shall not sell, lease, transfer or otherwise convey any portion of the Collateral if the documents creating the Liens prohibit such transfer, unless it first obtains the written consent of the Senior Lienholders, as provided for in such documents. In addition, Debtor shall not permit any security interest, liens or encumbrances to attach to the Equipment unless, in each such case, such security interest, lien or encumbrance is expressly subject and subordinate to the Liens (including any refinancing or other increase thereof as permitted under Section 3.1(b) of the Purchase Agreement).

11. Termination of Agreement.

The security interest created hereunder shall terminate only when Debtor has fully satisfied the Obligations, whether at maturity, by acceleration or prepayment, or otherwise. At such time, Secured Party shall execute and deliver all such instruments and documents as Debtor shall reasonably request in confirmation of such termination.

12. Miscellaneous.

12.1 Financing Statements. Debtor hereby agrees from time to time to execute any financing or other statements in such form as may be necessary to evidence, perfect, and continue the perfection of, a security interest in the Collateral in favor of Secured Party in any and all jurisdictions.

12.2 Course of Dealing. No course of dealing between Payor and Payee, or any delay in exercising any rights or remedies hereunder or under any communication, report, notice or other document or instrument referred to herein, shall operate as a waiver of any of the rights and remedies of Payor or Payee.

12.3 Amendments. This Note may be amended or varied only by a document, in writing, of even or subsequent date hereof executed by Payor and Payee.

12.4 Governing Law. This Note shall be governed by and interpreted under the laws of the State of New York applicable to contracts made and to be performed therein without giving effect to the principles of conflict of laws thereof; provided, however, that the parties shall be entitled to all rights conferred by Section 11303 of Title 49 of the U.S. Code and such additional rights arising out of the filing, recording or deposit hereof or of any financing statement or other document relating hereto, if any, as shall be conferred by the laws of the jurisdictions in which this Agreement or such financing statement or other document shall be filed, recorded or deposited.

12.5 Successors and Assigns. This Note shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and transferees.

12.6 Severability. The invalidity or unenforceability of any provision of this Note shall not affect the validity or enforceability of any other provision.

12.7 Headings. The descriptive headings in this note are for convenience of reference only, and shall not be deemed to affect the meaning or construction of any of the provisions hereof.

IN WITNESS WHEREOF, the Payor has executed this instrument on the date and year first above written.

PAYOR: FS RAILCARS, INC.

By:   
\_\_\_\_\_

AGREED TO:

AUTO-TRAIN CORPORATION

By:   
President

STATE OF *N.Y.* )  
 )  
COUNTY OF *N.Y.* ) SS.:

On this *29<sup>th</sup>* day of March, 1979, before me personally appeared *Stanley B. Scheinman*, to me known and being by me duly sworn, did depose and say that he is the *President* of FS RAILCARS, INC., the corporation which executed the foregoing instrument and that he executed such instrument on behalf of such corporation by order of the Board of Directors of such corporation.

*Lynn J. Hendler*  
\_\_\_\_\_  
Notary Public

LYNN J. HENDLER  
NOTARY PUBLIC, State of New York  
No. 31-4632177  
Qualified in New York County  
Commission Expires March 30, 1980

STATE OF                    )  
                              :   SS.:  
COUNTY OF                 )

On this            day of            , 1979, before me personally appeared            to me personally known, who being by me duly sworn, did depose and say that he is the            of AUTO-TRAIN CORPORATION, the corporation which executed the foregoing instrument, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

---

Notary Public

(SEAL)

EXHIBIT A

The transactions referred to in Section 3 hereof are the sale and leaseback transactions pursuant to which the Equipment will be sold to an independent third party and leased back by such party to Payor.

# SCHEDULE

<u>Description</u>	<u># of Units</u>	<u>Identification Numbers</u>
Half Dome Coach	7	904, 905, 907, 911-913, 909
Half Dome Diners	3	801, 802, 805
Kitchen Dormitory	1	593
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Sleeper	2	250, 252
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Diner*	1	570
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Sleepers*	2	304, 305
Steam Generators*	6	1130, 1132, 1134, 1136- 1138
Bi-Levels*	7	4, 17, 21, 22, 23, 25, 26
Tri-Levels*	20	101-120
Tri-Level Prototype*	1	100

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